

The Administrative Law Judge found claimant entitled to permanent partial general disability benefits for a twenty-four percent (24%) permanent partial impairment of function to the body as a whole. Both claimant and respondent requested review of the Administrative Law Judge's finding pertaining to nature and extent of disability. That is the sole issue now before the Appeals Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds, as follows:

For the reasons expressed below, the Award of the Administrative Law Judge should be affirmed. The findings of the Administrative Law Judge are accurate and are hereby adopted by the Appeals Board to the extent they are not inconsistent with the findings specifically made below.

Claimant sustained a work-related accident on January 29, 1993. The parties stipulated claimant's average weekly wage for purposes of this proceeding is \$381.92. This sum includes regular pay and overtime. Although claimant has returned to work with numerous restrictions and limitations, she currently earns \$9.10 per hour and is available to work overtime on weekends. Based upon a forty (40) hour work week, claimant now earns a minimum of \$364.00 per week, which is ninety-five percent (95%) of her pre-injury wage. Should one include overtime in the post-injury wage computation, the difference in wages would be even less. Therefore, the Appeals Board finds claimant has returned to work with the respondent at an accommodated position earning a comparable wage.

An injured worker is entitled to receive permanent partial general disability benefits when the worker is disabled in the manner which is partial in character and permanent in quality and which is not covered by the schedule in K.S.A. 44-510d. K.S.A. 1992 Supp. 44-510e provides:

"The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the ability of the employee to perform work in the open labor market and to earn comparable wages has been reduced, taking into consideration the employee's education, training, experience and capacity for rehabilitation, except that in any event the extent of permanent partial general disability shall not be less than percentage of functional impairment. . . . There shall be a presumption that the employee has no work disability if the employee engages in any work for wages comparable to the average gross weekly wage that the employee was earning at the time of the injury."

The above presumption applies. Although the claimant cites numerous statistics from the U.S. Census Bureau pertaining to the difference in wages between disabled and non-disabled workers, the Appeals Board finds the evidence does not overcome the presumption. Therefore, claimant is entitled to permanent partial general disability benefits based upon her impairment of function rating.

Respondent contends claimant's impairment of function is three percent (3%) as opined by George L. Lucas, M.D. However, the Appeals Board finds the impairment rating of the treating physician, board-certified orthopedic surgeon Paul D. Lesko, M.D., is more accurate. Dr. Lesko treated claimant for approximately six (6) months and provided a more specific diagnosis of claimant's injury. Dr. Lesko believes claimant has sustained a twenty-four percent (24%) functional impairment to the body due to her accidental injury. On the other hand, Dr. Lucas provided a one-time evaluation and a much more general diagnosis. Both doctors believe claimant should significantly restrict her work activities. Based upon the record as a whole, the Appeals Board finds claimant has sustained a twenty-four percent (24%) permanent partial impairment of function to the body as a whole as a result of her work-related injury.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Shannon S. Krysl entered in this proceeding on May 31, 1994, should be, and hereby is, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of March, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Kelly Johnston, Wichita, KS
Edward Heath, Jr., Wichita, KS
Shannon S. Krysl, Administrative Law Judge
George Gomez, Director